

***United States Court of Appeals
for the Second Circuit***



APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

NEVIN MAWHINNEY, :

Appellant, :

-against- :

No. 75-2086

ROBERT J. HENDERSON, Superintendent, :

PETER PREISER, Commissioner of :

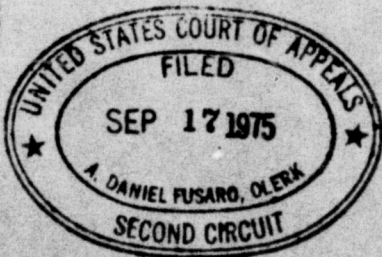
Corrections, and NORRIS, Lieutenant, :

Appellees. :

-----X

B
P/S

APPENDIX



WILLIAM E. HELLERSTEIN
ELLEN J. WINNER
Attorneys for Plaintiff-
Appellant
The Legal Aid Society
Prisoners' Rights Project
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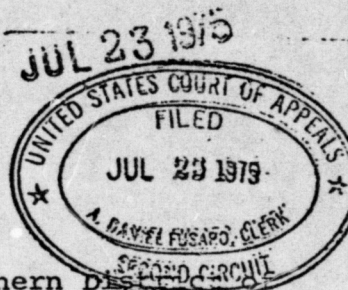
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

75-2086



NEVIN MAWHINNEY
Plaintiff-Appellant

vs

ROBERT J. HENDERSON, et al
Defendant-Appellee

Northern District
New York
Civil No. 75-CV-97

I N D E X

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15-2086

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PLAINTIFFS

MAWHINNEY, NEVIN

DEFENDANTS

HENDERSON, ROBERT J., Sup
A.C.F., PREISER, PETER, C
Corr., NORRIS, Lt., A.C.F

CAUSE plaintiff alleges he is refu
attendance at church services whi
confined to segregation

75-CV- 3

ATTORNEYS

Nevin Mawhinney #66300
135 State Street
Auburn, New York 13022

75-20861
A

<input checked="" type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORM JULY 1965	FILING FEES PAID			STATISTICS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE
				JS-5	
				JS-6	

UNITED STATES DISTRICT COURT DECK 1

DATE	NR.	PROCEEDINGS
1975		
Feb. 27	1	Filed civil rights complaint
" 26	2	" Memorandum-Decision and Order (2/26/75) dismissing complaint and directing same be filed without fee-SO ORDERED-HON. JAMES T. FOLEY.
" 27	3	" judgment
April 2	4	" Notice of Appeal

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
N. D. OF N. Y.
~~FILED~~

JAN 14 1975

AT 10 O'CLOCK 10 M.
J. R. SCULLY, Clerk
UTICA

NEVIN MAWHINNEY X
PLAINTIFF X
V. X
Robert J. Henderson Supt A.C.F. X
Peter Prieser Comm. Gen. X
Warris Lt. A.C.F. X
DEFENDANTS. X
X

APPLICATION IN FORMA PAUPERIS

75-CV-7097

I, Nevin Mawhinney, being duly sworn, depose and says: I am entitled to and intend to commence a Civil Action against the above named defendants. The nature of this action is: The denial of my ^{Rights under the} First, Eighth and Fourteenth Amendments to the United States Constitution, in that petitioner was denied the right to worship in the religion of his choice which is Protestant and was denied equal protection and the ^{due} process of law.

I believe I am entitled to the redress sought herein, because as a matter of Constitutional right and as more fully shown in the verified complaint filed here with.

Because of my poverty I am unable to pay the cost and fees incurred or to give security therefore.

Wherefore, plaintiff prays that he may have leave to prosecute this action in Forma Pauperis pursuant to Title 28, U.S.C. 1915.

Sworn to me before this

16 day of January 19 75

Dorothy J. Burns

DOROTHY J. BURNS
Notary Public, State of New York
No. 1432
Qualified in Cayuga County
Commission Expires March 30, 1976

Respectfully Submitted

Nevin Mawhinney 6630
Nevin Mawhinney
135 State Street
Auburn, New York 13022

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NEVIN MAWHIRNEY
PLAINTIFF
V.
Robert J. Henderson Supt. A.C.F.
Peter Prieser Comm. Corr.
Norris Lt. A.C.F.
DEFENDANTS.

APPLICATION TO PROCEED IN FORMA PAUPERIS

Verified Complaint:

STATE OF NEW YORK)
COUNTY OF CAYUGA)SS

NEVIN MAWHIRNEY, being duly sworn deposes and says

1. ~~that~~ Jurisdiction to have and determine this complaint is founded on Title 28, U.S.C. Sections 1343 et seq., and Title 42 U.S.C. Sections 1981-1983.
2. Plaintiff herein was and is a citizen of these United States and does submit this verified complaint in support of his motion for: An injunction against the continued violating of plaintiff's civil rights and monetary gain, (\$1,000.00) and other relief.
- 3) Defendant Robert J. Henderson Superintendent, was and is Superintendent Auburn Correctional Facility.
- 4) Defendant Peter Prieser Commissioner, was and is Commissioner of Correctional Services
- 5) Defendant Norris Lt. was and is Lt. in charge of disciplinary proceedings, Auburn Corr. Facility.
- 6) On November 22, 1974, plaintiff was placed in segregation.
- 7) On November 24, December 1, 1974, plaintiff was denied the right to association.

POINT TWO

Plaintiff was denied his Constitutional Rights to Freedom of Worship.
and is
Plaintiff was being denied his Constitutional rights to protection against cruel and unusual punishment. Plaintiff was and is being denied his constitutional rights to due process and equal protection of the law. If not restrained and enjoined by this Court, the illegal and unconstitutional actions of defendants alleged above will continue causing great and irreparable harm in that plaintiff will continue being deprived of

(2)

his rights to freely exercise his Religion - Due Process and Equal Protection

Plaintiff does not challenge the Constitutionality of the Rules and Regulations of the New York Department of Correction, he only seeks to enjoin Auburn Correctional officials from their application of such rules and regulation. The Procedure is at odds with due process.

Plaintiff is being denied his constitutional rights to attend his religious services. This denial being in violation of the First Amendment of the U.S. Constitution. The right to freely exercise his religion, due process and Equal Protection of the Law. And Protection against Cruel and Unusual Punishment

Defendants Henderson, Morris has an arbitrary procedure that denies all residents who are keeplocked and/or in punitive segregation, the right to attend religious services and/or any religious programs, without regard to the offence. If not restrained and enjoined by this court, the illegal and unconstitutional actions of defendants as alleged above will continue causing great and irreparable harm to plaintiff.

On the 13 day of November, 1974, plaintiff filed an Application pursuant to Article 78 of the Civil Practice Laws and Rules of New York State requesting aid, contending it constituted cruel and unusual punishment for Auburn officials to force inmates to stand out in foul weather for up to and exceeding one (1) hour in order to eat and the Auburn Correctional Facilities procedure of denying religious worship to all inmates keeplocked without regard to the offence the inmate maybe keeplocked for was in violation of the First Amendment to the Constitution of these United States. At the time of this filing petitioner was so keeplocked and denied.

On November 22, 1974 plaintiff was sent to solitary confinement as a form of harassment. Plaintiff for so long. Plaintiff in solitary prepared the within affidavit, plaintiff's exhibit one (1), however before same could be filed Judge Arthur Edwin Blauvelt denied the Article 78, on the 27th day of November, 1974, without settling the Constitutional questions and plaintiff received the notice of denial on the 3rd day of December 1974.

(3)

Plaintiff has no adequate remedy at law in State Courts, wherefore plaintiff prays that this Court adjudge and declare the actions of defendants were and are unconstitutional, and to issue and order preliminary and permanently enjoining defendant their officers, agents and employees, etc., and all others acting in concert with them from obstructing plaintiff in his religious worship, socializing with the general population and utilizing unconstitutional disciplinary methods to deprive plaintiff of his civil rights and for such other and further relief as this Court may deem just and proper.

When plaintiff requested due process (notification of the charge he was being punished for in writing and the right to call witnesses) to establish his innocence the Officer interviewing plaintiff said "Get the hell out of here." Such is the total disrespect defendants and their officers have for the rights of the General inmate population.

As Jesus Christ said "if the blind lead the blind they both shall fall into the ditch. How can those with total disregard to the supreme law of our land (the Constitution) teach others to be law abiding?"

Wherefore plaintiff asks for injunctive relief and monetary gain at the discretion of this Court up to \$1,000.00.

It is normal procedure at this facility when an inmate is placed in solitary he is interviewed weekly for evaluation. When plaintiff was so interviewed he was informed he would remain in solitary another week. Plaintiff then requested and was denied his rights as in *McNannell v Wolfe* 485 Fed 1054.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MEVIN MAWHIRNEY PLAINTIFF

V

Robert J. Henderson Supt. A.C.F.

John P. Poyser Comm. Comm.

Walter L. A.C.F.

DEFENDANT(S)

X

MEMORANDUM OF LAW

X

POINTS AND AUTHORITIES

X

X

X

X

X

X

Plaintiff, who is an inmate of Auburn Correctional Facility is challenging the constitutionality of this Facility's disciplinary procedures. He maintains that the procedure as applied violates the Due Process and Equal Protection Clauses of the 14th Amendment and the Freedom of Religion Clause of the First Amendment and the Cruel and Unusual Punishment clause of the 8th Amendment of the Constitution of the U.S. and asks for injunctive relief.

Plaintiff does not seek release from his incarceration. He challenges the Constitutional grounds of The Auburn Correctional Facility's disciplinary measures and procedures which result in sentences ranging from loss of privileges enjoyed by other inmates, to prolonged isolation from other inmates and the privileges enjoyed by same and from minor infractions of plaintiff's rights to outright barbaric and arbitrary infringement of rights guaranteed to plaintiff by the Constitution of the U.S. all of which have a significant impact on the condition of his confinement and his alleged rehabilitation. There is no adequate state remedy that can dispose of this case without the necessity of reaching the Federal Questions raised (CF, Railroad Comm. V Pullman Co., (1941) 312 U.S. 496), and there is no saving constructions of the application of the disciplinary procedures that can be made to avoid the constitutional debility (See e.g., Chicago v A.T. and S.F. Railroad (1958) 357 U.S. 77). Even upon conviction and incarceration, inmates retain some of their basic constitutionally protected liberties. Serious intrusion on these liberties can be made only by following the requirements of due process. (CP Gagnon v Searpelli, (1973) 114 U.S. 778; Morrissey v Brewer (1972) 408 U.S. 471)

Accordingly six circuit Court of Appeals have held that prison disciplinary proceedings which can result in the imposition of significant sanctions must be accompanied by and conducted with due process safeguards (Palmigiana v Baxter, (1st Cir.) 465 F 2d 179; U.S. Ex Rel. Miller v Toney, (7th Cir.) 479 F 2d 701; McDonnell v Wolf

(2)

In applying the "grievous loss" concept many things come into being in which deprivations are serious enough to require the application of due process, such as denial of religious worship, possible increase in the period of imprisonment through the loss of good behavior or time, forfeiture of earning capacity, segregated confinement for 7 or more days, indefinite confinement to segregation.

It would be difficult to imagine any punishment imposed by the Auburn disciplinary procedures that would not constitute any further impairment of an inmate's already restricted liberty. Additionally any entry on an inmate's file indicating ~~that~~ he has been placed in segregation has an unmeasurable adverse affect upon his parole eligibility. (See e.g. McDonnell v Wolf, Supra, at Page 1064 and 1071; and Hudson v Hardy 424 F 2d 854, 856) which undoubtedly adversely affects an inmate's interest in liberty, even a temporary suspension of inmate's activities constitute an abridgement of his already limited liberty. The distinction between a right and a privilege or between liberty or privilege is nowhere more meaningless than from behind prison walls. (Sostre v McGinnis 442 F2d 178 at page 196).

It is now axiomatic that the requisition of due process vary in accordance with the specific factual contexts. If the N.Y.S. Parole Board must afford an inmate due process no less can be required of a State Facility Disciplinary Proceeding. (E.G. Morrissey v Brewer Supra.,) Security and Official custody of inmates (Palmigiano v Baxter, Supra at page 1285) are interests that must be accommodated but the state interest in temporary isolation of potentially disruptive inmates (Bragiarelli v Sielaff (3rd Cir.) 483 F 2d 508) and must predicate their action upon a good faith determination that immediate action is necessary and must be accomplished in a manner consistent with maintenance of Order, that is least restrictive of the inmate's rights and privileges.

Except in emergency situations an inmate's interest in preserving his slight liberty and property and society's interest in rehabilitating him outweighs any competing interests that could be obtained by preserving the summary procedures found at Auburn's disciplinary proceedings.

~~It is a~~ ^{RARE} case indeed that will permit any prison official to deny an inmate his inherent right to attend and worship at religious services, the inmate may choose. (F.A.C.C. _____ 357 F. Supp. 877-880)

This issue has been thoroughly evaluated in the many instances where State and Federal Prison Officials obstructed such worship.

(2A)

not only because of the constitutional bar against such restrictions but because plaintiff placement in segregation is unconstitutional and unnecessary and his participation in religious services will do no harm to Facility order, or security and is not within the realm of a disciplinary proceeding to obstruct same.

In *N.Y.S. Association v Rockefeller* 357 F. Supp. 752, many aspects of conditions found of those confined were discussed. Among those basic standards of human decency was the right to exercise out of doors (CF *Hamilton v Schiro* 528 F. Supp. 1016, 1017).

The fitness of punishment is to be judged by applying evolving standards for the cruel and unusual punishment clause is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened to a human justice, *Weems v U.S.* 217 U.S. 349, 378, 30 S. Ct. 544. The rehabilitation goal is improved not impaired by imposing procedural protections for disciplinary proceedings designed to prevent arbitrariness and enhance the quality of the findings.

CONCLUSIONS

The temporary restraining order should be issued and a hearing ordered, to determine if a preliminary injunction shall issue and plaintiff shall be ordered restored to his pre-segregation status; permitted to participate in his religious services and to participate in the educational and rehabilitation programs offered here at Auburn Correctional Facility without undue obstruction by further unconstitutional undue disciplinary proceedings.

Sworn to before me and
DATED: this 10 day of January 19 75

Dorothy J. Burns

/s/ Tim Macchiarini

DOROTHY J. BURNS
Notary Public, State of New York
No. 1402
Qualified in Cayuga County
Commission Expires March 30, 1976

AFFIDAVIT OF SERVICE

This is to certify that on this _____ day of January _____, 1975, I provided the undersigned Notary Republic with copies of all the within papers to be provided by her for this Court for

The 3 defendants Robert J. Henderson, Peter Prieser and

Neeris

The Office of the Attorney General of New York State at his Office at State Office Building, Albany, New York.

The Office of the Clerk of the United States District Court, Northern District of New York, Auburn, New York.

Sworn to before me this 10 day of

January 1975

Sworn Signature of:

Dorothy J. Burns
NOTARY PUBLIC

Respectfully Submitted

Kevin Mahanney
Kevin Mahanney
135 State Street
Auburn, New York 13022

DOROTHY J. BURNS
Notary Public, State of New York
No. 1432
Qualified in Cayuga County
Commission Expires March 30, 1976

FILED
U.S. DISTRICT COURT
N.D. OF N.Y.
AUBURN
FEB 5 1975
CLERK OF COURT
U.S. DISTRICT COURT
N.D. OF N.Y.
AUBURN

PLAINTIFF'S EXHIBIT TWO
(REASONABLE FACSIMILE)

AT a Special Term of the Supreme Court of the County of Cayuga, held at the Court House in the City of Auburn, New York, on the 27th day of November, 1974

Present: Hon. Arthur Ervin Blauvelt
Justice Supreme Court

State of New York

Supreme Court Cayuga County

IN THE MATTER OF NEVEN HAWELINAY,	X
Petitioner,	X
-against-	X
ROBERT J. HENDERSON, SUPERINTENDENT, Auburn Correctional Facility,	X
Respondent.	X
	X
	X

JUDGEMENT
INDEX NO. 74-1559

Upon reading and filing petitioner's petition, sworn to November 12, 1974, seeking an order in this Article 78 Proceeding directing respondent, to show cause why he should not be directed to rescind his order forbidding loitering under an archway leading into the institutional yard and to desist from disciplining inmates for violation of such an order, and due deliberation having been had, and the Court being satisfied that the application is without merit, and having read and filed its Memorandum, dated November, 27th, 1974, it is

ORDERED, ADJUDGED AND DECREED that the application be and the same hereby is denied and the proceeding dismissed.

/s/ ARTHUR ERVIN BLAUVELT
Justice Supreme Court

SIGNED: December 3, 1974

ENTER:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

75-8139

NEVIN MAWHINNEY,

Plaintiff,

v.

75-CV- 97

ROBERT J. HENDERSON, Supt. A.C.F.
PETER PREISER, Comm. Corr.
NORRIS, LT. A.C.F.,

Defendants.

JAMES T. FOLEY, D. J.

MEMORANDUM-DECISION and ORDER

Plaintiff is confined to Auburn Correctional Facility and submits this civil rights action claiming as its main thrust that when he is confined to segregation, he is not permitted to attend religious services and participate in educational programs.

Specifically, plaintiff alleges that he was confined to segregation on November 22, 1974, and was denied the right to go to church on November 24 and December 1, 1974. Plaintiff does not state that he was denied the right to attend religious services of his choice after he was released from segregation. His complaint relates solely to the refusal to permit him to attend church services while he was confined to segregation but not while he was in the general population.

Plaintiff also mentions on page 3 of his papers that he is being denied his rights under *McDonnell v. Wolff*, 483 F.2d 1059 (5th Cir. 1973). He claims that when he asked for the charges for which he was being held and the right to call witnesses the officer advised him to "Get the hell out of here". This assertion is not further developed by facts. See *Williams v. McMann*, 454 F.2d 1139 (2d Cir. 1972). The administrative procedures in 7 NYCRR 250 et seq have been described as recognizing "both the demands of elementary fairness and the suitability of an impartial hearing". *U.S. ex rel. Haymes v. Montayne*, ____ F.2d ____, 10/4/74. The Eighth Circuit

ruling in Wolff was modified in Wolff v. McDonnell, 418 U.S. 539 (1974).

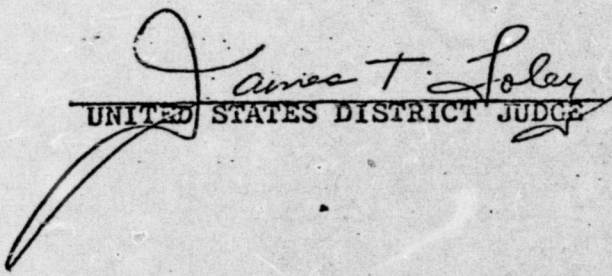
Confinement to segregation has been held to be constitutional. Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971), cert. den. 404 U.S. 1049 (1972). The denial of the right to worship while confined to segregation, in my judgment, does not constitute a denial of plaintiff's constitutional rights.

The complaint shall be filed by the Clerk without payment of fee and is dismissed for failure to state federal claims upon which relief can be granted.

It is so Ordered.

Dated: February 26, 1975

Albany, New York


UNITED STATES DISTRICT JUDGE

United States District Court

FOR THE

NORTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 75-CV-97

NEVIN MAWHINNEY,

Plaintiff

vs.

ROBERT J. HENDERSON, Supt. A.C.F.,
PETER PREISER, Comm. Corr.
NORRIS, LT., A.C.F.,

Defendants

JUDGMENT

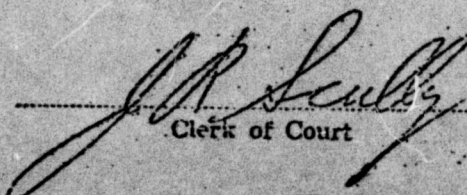
consideration
This action came on for ~~trial~~ before the Court, Honorable James T. Foley,
United States District Judge, presiding, and the issues having been duly ~~tried~~
considered
(tried) and a decision having been duly rendered,

It is Ordered and Adjudged

complaint is dismissed.

Dated at Utica, New York
of February 1975

, this 27th day


Clerk of Court

COPY OF WITHIN PAPER
RECEIVED
DEPARTMENT OF LAW

SEP 17 1975
NEW YORK
[Signature]
ATTORNEY GENERAL

SEP 17 1975
NEW YORK
ATTORNEY GENERAL